

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT - 4 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

AURIO A. MATOS

LLOYD SANTIAGO-SANTOS and LOURDES
RODRIGUES-BONET

For Construction Permit for a New
Station on Channel 293A in
Culebra, Puerto Rico

MM Docket No. 93-89

File No. BPH-911114MS

File No. BPH-911115MP

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW OF
AURIO A. MATOS

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PROPOSED FINDINGS OF FACT
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Aurio A. Matos, by his counsel and pursuant to § 1.263 of the Commission's Rules, submits his Proposed Findings of Fact and Conclusions of Law in the above-captioned proceeding.

I. Preliminary Statement

1. By Hearing Designation Order ("HDO") released April 8, 1993, the Commission designated for hearing the mutually exclusive applications of Aurio A. Matos ("Matos") and Lloyd Santiago-Santos and Lourdes Rodrigues-Bonet ("Santiago and Rodrigues"), for a construction permit for a new FM station on Channel 293A in Culebra, Puerto Rico. The HDO specified the following issues for hearing:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.
2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

A comparative coverage inquiry was made part of the "standard comparative issue" analysis. (Id.) Pursuant to the Presiding Judge's Order, FCC 93M-498, released July 29, 1993, an Admissions

Session was held on August 18, 1993. Upon completion of the introduction of the written direct cases of both applicants, the Presiding Judge concluded that there was no need for the cross-examination of persons who sponsored the various exhibits in the proceeding. (Tr. 27) By Order 93M-544, released August 25, 1993, the Presiding Judge received into evidence a Joint Engineering Stipulation of the parties as Joint Exhibit 1 ("JT 1").

II. Findings of Fact

A. Comparative Coverage

2. On August 20, 1993, the parties filed a Joint Engineering Stipulation and Exhibit, which was later admitted into evidence as Joint Exhibit 1. (See Order 93M-544, released August 25, 1993). All of the areas and population proposed to be served by the two applicants are already served by five or more aural services. (JT 1, p. 2). ^{1/}

3. In terms of total area and population, Matos proposes to serve, in its 60 dBu contour, a population of 69,092 people in an area of 440 square kilometers. (JT 1, p. 4). ^{2/} The Santiago and Rodrigues application proposes to serve, in its 60 dBu contour, 1,542 persons in a 44 square kilometer area. (Id.)

B. Aurio A. Matos

4. Matos is an individual applicant and proposes to

^{1/} At the time the record was closed, and at the date of submission of these Proposed Findings, there is still pending a petition to enlarge issues against Santiago and Rodrigues seeking the specification of additional issues concerning their public file and possible misrepresentation at their depositions.

^{2/} The population figures used in Joint Exhibit 1 are based on the 1990 U.S. Census. (JT 1, p. 4)

integrate full time (a minimum of forty hours per week) into the management of the new Culebra facility as it's general manager. (Matos Ex. 1, p. 1) As general manager, he will direct the overall operation of the station, establishing and implementing the station's policies and practices. (Id.) He will supervise and have responsibility for the station's compliance with all applicable F.C.C. rules including serving as administrator of the station's EEO program. (Id.) In addition, Matos will be responsible for the hiring and firing of station personnel. (Id.)

5. Since August 1, 1992, Matos has served as station manager of WCXQ(AM), Moca, Puerto Rico. (Id.) Matos pledged to terminate his employment at WCXQ(AM), and any other employment he might undertake, so that he can devote full time efforts to the construction and operation of the Culebra facility. (Id.)

6. Matos is an Hispanic male. (Id.)

7. Since June 1, 1993, Matos has resided at Calle Yaurel, J-14, Alturas de Mayaguez, Puerto Rico. (Matos Ex.1, p. 1) For the three years prior to that, he resided at Urb. Alturas, Calle Laliza Esq. Cerro La Santa, AC D9, Mayaguez, Puerto Rico. (Id. at p. 2) Prior to that, Matos was a lifelong resident at Carr.411 km 4.3, Bo Piedras Blancas, Bajaguez, Aguada, Puerto Rico. (Id.) Matos has pledged to relocate to Culebra in the event his application is granted. (Id.)

8. In addition to his experience as station manager of WCXQ(AM) since August 1, 1992, Matos will also seek past broadcast experience enhancement credit for the following:

* 1980-1989 - General Manager, WRFE-FM, Mayaguez City,

Puerto Rico;

* 1989-July 31, 1992 - General Manager and president and a director of the licensee of non-commercial educational FM Station WJDZ (now WKVN), Levittown, Puerto Rico. (Id.)

9. Matos currently has no other media interests. (Id.) ^{3/}

10. Matos proposes to install auxiliary power at both the studio and transmitter locations so that service can be provided during commercial power failures. (Matos Ex. 2, p. 1)

C. Lloyd Santiago-Santos and Lourdes Rodrigues-Bonet

11. Santiago and Rodrigues state that they are 50/50 partners in their application. ^{4/} (S&R Ex. 1, p. 1; S&R Ex. 2, p. 1)

12. Ms. Rodrigues-Bonet proposes to integrate full-time (at least 40 hours per week) into the management of the proposed Culebra facility as its general manager. (S&R Ex. 1, p. 2) She is presently employed in the accounting department of the Dover Elevator Company in San Juan. (Id. at p. 1) Ms. Rodrigues-Bonet has pledged to terminate any employment she might then have in order to fulfill her integration commitment. (Id.) She has also proposed to relocate to Culebra no later than the beginning of program test authority. (Id.)

13. Mr. Santiago-Santos proposes to integrate full-time (at

^{3/} At the time he filed his application, Matos pledged to divest all of his interest in WJDZ-FM in the event his Culebra application was granted. (Matos Ex. 1, p. 2) As reported by Amendment filed April 26, 1993, and received by Order of the Presiding Judge, FCC 93M-301, released May 25, 1993, Community Educational Group, the licensee of WJDZ, has, after receiving Commission consent, assigned the license of WJDZ to Clamor Broadcast Network. (Id.)

^{4/} No partnership documents or any type of memorandum have been produced to evidence the existence of a "partnership".

least 40 hours per week) into the management of the proposed Culebra facility as its sales manager. (S&R Ex. 2, p. 2) He is presently employed as a sales manager for El Periodico Del Norte, a weekly newspaper serving the northern part of Puerto Rico. (Id. at p. 1) He has pledged to terminate all employment and relocate to Culebra no later than the beginning of program test authority. (Id.)

14. Both Santiago and Rodriguez are Hispanic. (S&R Ex. 1, p. 1; S&R Ex. 2, p. 1)

15. Ms. Rodriguez-Bonet testified that she has been employed since college graduation in various business/accounting positions. (S&R Ex. 1, p. 1) She seeks past broadcast experience credit for her work as an accountant in the accounting/business office of WQBS, San Juan, Puerto Rico from 1980 to late 1981. (Id. at p. 3)

16. Mr. Santiago-Santos seeks past broadcast experience credit for the following:

- * 1981-1982 - sales person, WQIL, San Juan, Puerto Rico;
- * 1982-1991 - General Manager, WMSW, Hatillo, Puerto Rico.

(S&R Ex. 2, p. 3)

17. Ms. Rodriguez-Bonet is a 33 1/3% owner of Santiago Communications, Inc., publisher of a monthly medical newspaper that is distributed free of charge in the northern part of Puerto Rico. (S&R Ex. 1, p. 2) Mr. Santiago-Santos also owns 33 1/3% of Santiago Communications, Inc. (S&R Ex. 2, p. 2) Mr. Santiago-Santos also has a 50% interest in the corporation that publishes the weekly newspaper El Periodico Del Norte. (Id.) That newspaper is published in Arecibo and distributed at no charge to residents on

the northern part of the island. (Id.)

18. Both Rodrigues and Santiago have pledged to divest themselves of these interests no later than the commencement of program test authority. (S&R Ex. 1, p. 3; S&R Ex. 2, p. 3)

19. Santiago and Rodrigues propose to provide auxiliary power. (S&R Ex. 1, p. 4)

III. Conclusions of Law

A. Comparative Coverage

20. Matos proposes to serve 69,092 people in an area of 440 square kilometers, while Santiago and Rodrigues propose to serve only 1,542 persons in an area of 44 square kilometers (§ 3). Even though the areas and populations proposed in the two applications are already served by 5 or more aural services, Matos is entitled to a comparative coverage preference. The question is the degree of preference to which Matos is entitled.

21. In Simon Geller, 90 FCC 2d 250, 268-269, 276 (1982), a slight preference was awarded to an applicant proposing to serve four times the area and eight times the population of the competing application, where all areas and populations considered were already served by 5 or more aural services. Matos proposes to serve 45 times the population and 10 times the area of Santiago and Rodrigues, more than double the area and population difference for which the applicant in Geller received only a slight preference. Since differences of less than the differences in Geller have been awarded lesser preferences,^{5/} it is axiomatic that such a

^{5/} See, e.g., Family Broadcasting Group, 93 FCC 2d 771, 779, 53 RR 2d 662 (§ 17) (Rev. Bd. 1983), rev. denied, FCC 83-559 (1983) (34% population differential (411,594 persons v. 550,570

tremendous difference should be accorded a greater preference.

B. Aurio Matos

22. Aurio A. Matos is an individual applicant. (PF ¶ 4) Matos has proposed to integrate full-time into the ownership of the proposed Culebra facility as its general manager. (Id.) He has also proposed to terminate any employment that he might have undertake to allow him to devote full efforts to the construction and operation of the Culebra facility. (PF ¶ 5) As a result, under the Commission's Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393 (1965) (hereinafter the "Policy Statement"), Matos is entitled to 100% quantitative integration credit.

23. Matos is an Hispanic male. (PF ¶ 6) His application is therefore entitled to 100% minority enhancement consistent with Metro Broadcasting, Inc., 497 US 547, 110 S.Ct. 2997, 111 L Ed 2d 445 (1990).

24. In the event his application is granted, Matos has pledged to relocate to Culebra. (PF ¶ 7) His proposed future residence entitles his application to a slight comparative enhancement. Policy Statement at 396.

25. Matos has proposed to supply auxiliary power. (PF ¶ 10)

26. Matos seeks enhancement of his application for his past broadcast experience which includes over 13 years of experience as a general manager at radio facilities. Such managerial experience is entitled to more significant credit than non-managerial

persons) and less than 10% area differential receives very slight preference); Barton Broadcasting Co., 104 FCC 2d 785, 790-91, 60 RR 2d 322 (¶ 8) (Rev. Bd. 1986) (26.6% population differential awarded very slight preference).

experience.

C. Lloyd Santiago-Santos and Lourdes Rodrigues-Bonet

27. The Santiago and Rodrigues applicant is a 50/50 general partnership. (PF ¶ 11) Both principals have proposed to integrate full-time into the ownership of the proposed Culebra facility, Mr. Santiago-Santos as the station's sales manager and Ms. Rodrigues-Bonet as the station's general manager. (PF ¶¶ 12, 13) They have also proposed to terminate any employment that they might have no later than the commencement of program test authority in the event their application is granted. (Id.)

28. Assuming the ALJ does not find the lack of written documentation and organizational papers fatal (compare, Religious Broadcasting Network, 3 FCC Rcd 4085, 65 RR 2d 56 (¶ 28) (Rev Bd. 1988)), then under the Policy Statement, Santiago and Rodrigues is entitled to 100% quantitative integration credit.

29. Both Santiago and Rodrigues are Hispanic. (PF ¶ 14) Their application is therefore entitled to 100% minority enhancement consistent with Metro, supra.

30. Santiago and Rodrigues have both pledged to relocate to Culebra prior to the beginning of program test authority in the event their application is granted. (PF ¶¶ 12, 13) Their proposed future residence entitles their application to a slight comparative enhancement. Policy Statement at 396.

31. Santiago and Rodrigues have proposed to provide auxiliary power. (PF ¶ 19)

32. Santiago and Rodrigues' application should be enhanced for the nine years of general manager experience of Mr. Santiago-

Santos. (PF ¶ 16) However, Ms. Rodrigues-Bonet has only one year of experience at a broadcast facility, working as an accountant. (PF ¶ 15) Ms. Rodrigues-Bonet's experience as an accountant at a radio station does not have the requisite relation to "broadcasting" that is required before past broadcast experience can be awarded. See, Jarad Broadcasting, Co., Inc., 1 FCC Rcd 181, 61 RR 2d 389 (¶ 23) (Rev. Bd. 1986). ^{6/} In any event, the duration of her time in that capacity is not sufficient to warrant significant credit. (Id. at ¶ 35) In light of Ms. Rodrigues-Bonet's lack of cognizable broadcast experience, Santiago and Rodrigues' application is only enhanced for 50% broadcast experience.

IV. Ultimate Conclusion

33. Both applicants have made timely divestiture claims and have pledged to provide auxiliary power. Both applicants are entitled to 100% quantitative integration credit, enhanced by pledges to relocate to the community of license in the event of grant of their respective applications. Neither applicant sought or receives credit for present local residence or civic involvement. Both applicants also receive 100% minority integration enhancement credit. The only two disparities between the applicants concern their respective coverage proposals and their past broadcast experience. Matos is superior in both of those areas.

^{6/} Credit has previously been given for non-management experience such as producing or hosting radio or television shows. Ronald Sorenson, 6 FCC Rcd 1952, 68 RR 2d 1580 (1991) (¶¶ 12-14), but not for accountant work at a station.

34. Matos' slight (at the very least) to moderate coverage preference is decisive in this proceeding. His proposal to serve approximately 45 times the population and 10 times the area of his competitor requires award of a decisional preference and grant of his application. Geller, supra.

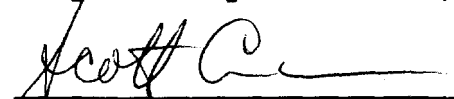
35. Even if not found to be decisive, Matos' coverage preference combined with his superior past broadcast experience, make his application comparatively superior to the application of Santiago and Rodrigues. See, Jarad, supra, (qualitative breadth of experience is entitled to greater preference). ^{1/}

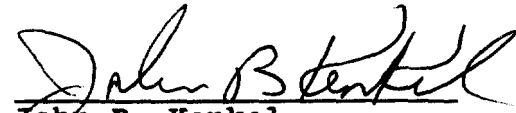
WHEREFORE, it is respectfully requested that the Presiding Judge issue an Initial Decision granting the application of Aurio A. Matos and denying the application of Lloyd Santiago-Santos and Lourdes Rodrigues-Bonet.

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October 4, 1993

Respectfully submitted,


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^{1/} Even if Ms. Rodrigues-Bonet's "experience" as a radio station accountant were credited, Matos' experience is still of greater duration and is more significant in nature than hers, so a slight overall preference would still be with Matos.

CERTIFICATE OF SERVICE

I, Scott Cinnamon, do certify that on this 4th day of October, 1993, a copy of the foregoing was sent via first class mail, postage pre-paid or delivered, as indicated, to the parties set forth below:

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